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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RONALD JONES,

Plaintiff, Cross-Defendant
and Appellant,

v.

BERNICE JOHNSON,

Defendant, Cross-Complainant
and Respondent.

B188325

(Super. Ct. No. BC 301912)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Irving S. Feffer, Judge. Reversed in part with directions and affirmed in part.

David Romley for Plaintiff, Cross-Defendant and Appellant.

No appearance for Defendant, Cross-Complainant and Respondent.

Ronald Jones, doing business as Icon Development, sued Bernice Johnson in a dispute arising out of some construction work that Jones performed on Johnson's home. Johnson cross-complained against Jones. After a jury trial, the court entered judgment against Jones on all of his claims, and in favor of Johnson on one of her claims, awarding her \$45,000 plus interest and costs. Jones appeals. We reverse in part.

BACKGROUND

Jones alleged that after Johnson's home was damaged by a fire, he contracted with Johnson to repair the damage that was covered by her insurance. Jones alleged that he also performed additional work on Johnson's home, not covered by her insurance or the written contract, for which she agreed to pay \$14,220.08. Jones alleged that Johnson refused to pay him all of the money to which he was allegedly entitled, and he sought to recover the balance. Jones' second amended complaint against Johnson alleged claims for breach of contract and foreclosure of a mechanic's lien, and common counts for (1) the agreed price of work, labor, and materials furnished, (2) the reasonable value of work, labor, and services furnished, and (3) money had and received.

In her cross-complaint, Johnson alleged that Jones breached the contract by failing to complete the work, and that the work he did perform was so defective that she was forced to have all of it redone. Johnson also alleged that Jones intentionally induced her to enter into the contract by falsely informing her that he was licensed. She alleged that she relied on that false information and was damaged as a result, and that if she had known that Jones' license was suspended, she would not have entered into the contract. Johnson's cross-complaint against Jones alleged claims for breach of contract and fraud, among others.

Before trial, Johnson moved in limine to exclude all evidence and argument relating to any alleged oral agreements for Jones to do additional work not covered by the written contract, on the ground that Business and Professions Code section 7159 prohibited such oral agreements. The trial court granted the motion, thereby precluding Jones from pursuing his claim for the reasonable value of that additional work.

The evidence introduced at trial showed that when Jones entered into the contract with Johnson, his license was suspended because his bond had “terminated.” The evidence also showed that Jones’ license was reinstated before Jones began work on Johnson’s house. In her trial testimony, Johnson gave a negative answer to the question, “If you knew Ronald Jones wasn’t a licensed contractor, would you have allowed him to do the work on your house?”

The jury returned its verdict on September 6, 2005, but neither the verdict nor the minute order for that day is in the record on appeal. We have independently examined the trial court record, however, which contains the verdict.

The jury disposed of the parties’ contract claims by finding that “the contract terms” were not “clear enough so that the parties could understand what each was required to do[.]” The jury found in favor of Johnson on her fraud claim, awarding her \$35,000 in economic and \$10,000 in noneconomic damages. The judgment, which incorporates the jury’s verdict on Johnson’s fraud claim, also provides that Jones shall recover nothing by his second amended complaint. Jones timely appealed.¹

STANDARD OF REVIEW

We review the trial court’s conclusions of law de novo, and we review the jury’s findings of fact under the substantial evidence standard. (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888.)

DISCUSSION

First, Jones argues that Johnson admitted that she entered into a contract with him, so her admission precludes the jury’s finding that “there was no contract between the parties.” The argument fails. Johnson never denied that she signed a contract with Jones. What she disputed was whether the terms of the contract were sufficiently definite for the contract to be enforceable. On that issue, she pleaded in the alternative—she contended that the contract was unenforceable, but if it was enforceable, she sought damages for

¹ Johnson did not file a respondent’s brief. We therefore “will decide the appeal on the record, the opening brief, and any oral argument by the appellant.” (Cal. Rules of Court, rule 8.220(a)(2).)

breach. Such alternative pleading is not improper. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 29.) Johnson's purported "admissions" concerning the existence of a written contract did not preclude the jury from finding in her favor on her contention that the contract was insufficiently clear to be enforceable.

Second, Jones argues that the judgment on Johnson's fraud claim is not supported by substantial evidence because there is no evidence of a material misrepresentation on which Johnson relied. In support of this argument, Jones points out that Johnson testified only that she would not have let Jones *work on her house* if she had known that he was not licensed, but she did not testify that she would not have *entered into the contract* if she had known he was not licensed. We agree with Jones. There is no evidence that Johnson would not have entered into the contract if she had known that Jones' license was suspended at that time, so there is no evidence that she relied on his misrepresentation that he was then licensed. (See *Agosta v. Astor* (2004) 120 Cal.App.4th 596, 603 [listing the elements of fraud, including justifiable reliance].) Johnson's testimony that she would not have let Jones work on her house if she had known his license was suspended is irrelevant, because it is undisputed that Jones' license was not suspended when he worked on her house. We therefore reverse the judgment as to Johnson's fraud claim.²

Third, Jones argues that the trial court erred when it excluded all evidence and argument relating to any alleged oral agreements for Jones to do additional work not covered by the written contract, thereby barring any recovery for the reasonable value of such additional work. We agree.

The trial court based its decision on the then-applicable version of Business & Professions Code section 7159, subdivision (h), which provided that "No extra or change-order work may be required to be performed without prior written authorization of the person contracting for the construction of the home improvement or swimming pool. No

² It is consequently unnecessary for us to address Jones' other arguments concerning Johnson's fraud claim.

change-order is enforceable against the person contracting for home improvement work or swimming pool construction unless it clearly sets forth the scope of work encompassed by the change-order and the price to be charged for the changes. Any change-order forms for changes or extra work shall be incorporated in, and become a part of, the contract.

Failure to comply with the requirements of this subdivision does not preclude the recovery of compensation for work performed based upon quasi-contract, quantum meruit, restitution, or other similar legal or equitable remedies designed to prevent unjust enrichment.” (Italics added.)

Jones pleaded a claim to recover the reasonable value of the additional work that was not covered by the written contract. The claim is expressly permitted by the controlling statute, so there is no reason why he should not have been allowed to pursue it.

Fourth, Jones argues that “[a]s a result of the erroneous exclusion of evidence of oral change orders and an erroneous finding that no contract existed, appellant was denied his right to foreclose a valid mechanic’s lien.” The argument fails. In the trial court, Johnson argued against the mechanic’s lien claim on the ground that the lien itself was invalid because it included charges for work and materials not furnished, citing Civil Code section 3118. The trial court record contains no contrary arguments by Jones, so he failed to preserve any such arguments for appeal. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1.) In addition, Jones’ lien foreclosure claim is an equitable action decided by the court, not the jury (*Selby Constructors v. McCarthy* (1979) 91 Cal.App.3d 517, 525-526), but no party requested a statement of decision. We must therefore assume that the trial court made whatever findings are necessary to sustain the judgment. (*Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 140.) On appeal, Jones does not argue that the necessary findings (e.g., that the lien included charges for work and materials not furnished) are not supported by substantial evidence. Accordingly, we affirm the judgment as to Jones’ claim for foreclosure of his mechanic’s lien.

DISPOSITION

The judgment is reversed with respect to the fourth cause of action for reasonable value of work, labor, and services in plaintiff's second amended complaint, which shall be retried. The judgment is also reversed with respect to the third cause of action for fraud in defendant's cross-complaint, and the trial court is directed to enter judgment against defendant on that cause of action. The judgment is otherwise affirmed. Appellant shall recover his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, Acting P.J.

VOGEL, J.